

Remarks

Claims 9 to 11, 13, 14, 17, 19 and 20 are pending in this application of which claims 13, 14, 19 and 20 are in independent form. Claims 19 and 20 have been amended solely to clarify the present invention. Support for the amendments to claims 19 and 20 can be found, for example, in FIG. 3, step 158, and the corresponding description.

The specification was amended to include a priority claim under 37 CFR 1.78(a) in accordance with the procedure prescribed in the OG notice of October 2, 2001.

In paragraphs 3 and 4, the Office rejects claims 19 and 20 under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. In particular, the view was expressed that the limitation "said operator-controlled element" in lines 12 to 13 of claim 19 and in lines 13 to 14 of claim 20 lack antecedent basis.

In response, applicants have amended claims 19 and 20 as suggested by the Office so that the claims should now be definite as required by the statute.

In paragraphs 5 and 6, the Office rejected claims 9 to 11, 13 to 14, 17 and 19 to 20 under 35 USC §103(a) as being unpatentable over United States Patent 5,052,531 to Bota in view of United States Patent 5,402,792 to Butsuen et al (hereinafter "Butsuen").

With regard to claims 13, 14, 19 and 20, the view was expressed that Bota discloses all the elements of claim 13, from line 11 onwards, of claim 14, from line 12 onwards, of claim 19,

from line 9 onwards and of claim 20, from line 10 onwards.

The view was further expressed that Bota shows activation of the brake when the operator presses the brake pedal. It was acknowledged that Bota does not show measuring the distance of the vehicle to an object ahead of the vehicle, and activating the braking control in dependence upon the distance and desired value so that the vehicle can brake to standstill.

However, the view was expressed that Butsuen discloses an automatic brake control system comprising a control unit (11), a radar unit (10) for measuring the distance of the vehicle to an object ahead of the vehicle, and the brake being controlled in dependence upon the distance (L) and a desired value (that is, velocity V) so that the vehicle can be braked to standstill (see FIG. 5). Thus, it was argued, that it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the vehicle of Bota with an automatic brake control system as taught by Butsuen in order to safely avoid the obstacle or the vehicle ahead. Reference was made to column 1, lines 17 to 20 and 41 to 44, of Butsuen.

Bota discloses that when a driver brakes a vehicle to standstill, the braking power is built-up or maintained and the transmission is controlled to be placed in "neutral." (See, for example, column 1, lines 64 to 67, and column 1, lines 44 to 48). In column 6, lines 51 to 64, Bota describes the release of the brake pedal and the renewed starting of the vehicle. The driver operates the control, for example, the transmission shift lever and releases the brake pedal 82. This results in the forward clutch 15 beginning a clutching operation whereby the first gear

stage begins to be engaged. When the turbine rpm begins to decrease, the action of the brake is released. This allows the driver to start the vehicle smoothly free from slippage into the rearward direction. Notably, an automatic start drive of the vehicle is not disclosed by Bota. Also, as the Office acknowledges, Bota does not disclose measuring the distance of the vehicle to an object ahead of the vehicle and activating the braking control in dependence upon the distance and a desired value so that the vehicle can brake to standstill.

Butsuen discloses an automatic brake control system having a distance regulator, which allows braking, including braking to standstill, of the driving vehicle if the distance to the vehicle ahead falls below a set minimum (see, for example, column 2, lines 29 to 48, and column 4, line 68 to column 5, line 7). As in Bota, Butsuen does not disclose an automatic renewed start drive of the vehicle. This is so because Butsuen does not disclose the necessary engagement with the motor.

The applicants' invention is directed to a method for ensuring standstill of a vehicle. However, beyond this, the invention is also directed to activating the adaptive road speed controller of the vehicle after such a standstill. This feature of the applicants' invention is expressed in the below recited features and limitations of claim 13:

"detecting a start drive command of the driver when an operator-controlled element is actuated;

disengaging said parking brake function and controlling said automatic transmission out of said neutral position or said park position when said start-drive command is detected; and,

activating said adaptive road speed controller in response to an actuation of said operator-controlled element by the driver." (emphasis added)

Claim 13 combines the activation of the adaptive road speed controller with the steps that allow braking to standstill and building up and/or maintaining a braking force.

Following the rationale set forth in the action, the person of ordinary skill would use Butsuen's brake control system to bring the driving vehicle to a standstill. After bringing the vehicle to a standstill using the method of Butsuen, the person skilled in the art would resort to Bota's arrangement to secure standstill. Since Butsuen does not disclose a way for renewed start drive of the vehicle, the person skilled in the art would have to resort to Bota for a method of renewed start drive of the vehicle. As outlined above, Bota only discloses a manual start driving of the vehicle by the driver. An automatic start driving when the driver actuates an operator-control element and thus activates the adaptive road speed controller is disclosed neither by Bota nor by Butsuen.

Thus, applicants have shown that Bota and Butsuen neither alone nor in combination disclose or suggest all the elements of the claimed invention as required for a *prima facie* case of obviousness.

Also, Bota is concerned with providing a mechanism to prevent slippage of a vehicle stopped on an upward slope. Butsuen is concerned with an automatic brake control system during driving. Thus, the two references have very different, if not antithetic, objectives. Neither Bota nor Butsuen nor the

general knowledge in the art teaches or suggests combining these teachings. Applicants respectfully submit that such a combination would be based on impermissible hindsight utilizing the applicants' disclosure as a road map.

In view of the above, claim 13 should now patentably distinguish applicants' invention over the combination of Bota and Butsuen and be allowable. Claim 14 essentially parallels claim 13 in an apparatus context so that this claim too should now be allowable.

Claims 19 and 20 are amended herein to incorporate the further feature and limitation:

"controlling the engine control or the braking control of said vehicle in dependence upon said distance and speed of said vehicle."

so that this claim is now even further away from the combination of Bota and Butsuen and should likewise be allowable. Claim 20 parallels claim 19 in an apparatus context so that this claim should also be allowable.

Reconsideration of the application is earnestly solicited.

Respectfully submitted,



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